IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 280 OF 2003

Mangalabai Yashanna Shekapure .... appellant

versus

The State of Maharashtra ... Respondent.

None for the appellant
Shri V.B.Konde Deshmukh APP for Respondent.

CORAM; V.G. PALSHIKAR &
SMT.NISHITA MHATRE,JJ.

DATED; 9TH NOVEMBER, 2006.

JUDGMENT: (Per Palshikar, J.)

1. Being aggrieved by the judgment and order dated 24th February 2003 passed by the III Addl.Sessions Judge, Solapur in Sessions trial No. 58 of 2002, the appellants named above have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. The advocate for the appellant is not present. The case is of the year 2002 and the accused is in jail for last four years. Taking into consideration the fact that the accused is in jail for last four years, we deem it just and proper to decide the appeal on merit. The learned Addl. P.P. took us to the entire record

and we have reappreciated the evidence both oral and documentary. The prosecution case as disclosed by this reappreciation stated briefly is as under:

3. Accused Mangala is the first wife of Yashanna. She had three daughters and there was no male issue in the family of Yashanna. Therefore, the accused Mangala contacted P.w.1 father of the victim and sought his daughter Sulochana/Lochanabai as second wife for her husband Yashanna. The proposal was extended and Sulochana has married to Yashanna. According to the prosecution, on 17-1-2002 deceased Sulocahana, accused Mangala and daughter of accused by name Asha were in the house. Accused had given the deceased some groundnuts for grinding. While so doing the victim kept aside some groundnuts for her to consume as she was fasting that day. When accused saw this, she got annoyed and abused the victim, pouring kerosene on her and put her ablaze. The victim sustained injuries and was admitted to civil hospital, Solapur. The accused, according to the prosecution, has threatened her not to disclose the factual situation to anyone. The matter was reported to the police and statements in the shape of dying declarations of the victim were recorded. The accused persons were arrested, investigation was completed and the accused was prosecuted for murdering the victim. The prosecution examined in all seven

witnesses to prove its case. The learned trial Judge on appreciation of evidence came to the conclusion of guilt and convicted the accused as aforesaid. It is this order of conviction which is assailed in this appeal by the accused.

4. In this case, we have three statements of dying declarations of the victim recorded by the authorities. The first is dated 17-1-2002 Exh.24 recorded at about 7.45 p.m. The second is recorded immediately thereafter at about 8.00 p.m. on the same day which is at Exh.25. Exh.18 is third dying declaration, recorded three days thereafter on 20-1-2002. All these statements were recorded by police. The learned trial Judge accepted these statements which shows the involvement of the accused in the matter of burning the victim. He took support for his conclusion from other attending evidence i.e. P.w.1 Dattu Rama Sakhare, father of the victim and other statements made by the victim.

5. In this case, we have various peculiar circumstances of the victim making three dying declarations regarding her cause of death and two of them are made by the accused in Exhs. 24 and 25. Both recorded on 17-1-2002. Victim had very clearly stated that her husband had gone to Akkalkot and asked her to

prepare some tea for him and while she was so preparing the tea, her saree accidently fell on the stove and she sustained burn injury. This statement in Exh.24 is corroborated in all material particulars with the statement recorded in Exh.25 recorded immediately thereafter.

6. Thereafter P.w. 1 the father of the victim came. It is alleged by him in his deposition that he was told by the victim that the accused had put her (Victim) on fire. He also speaks of threat administered by the accused to the victim, and it is after meeting of P.w.1 that Exh.18 is recorded. In that the victim clearly names the accused as profounder of the crime. It is for the first time here that victim mentions of her keeping some groundnuts separately for her consumption which annoyed the accused and resulted in the accused burning the victim. This aspect is never mentioned by the victim in the two statements recorded three days earlier. The medical evidence is consistent to death by burns and it is therefore of no use as death by burn accidental or homicidal, would reflect some situation. Even one was to pour kerosene oneself and light the fire or it is done by someone else as an offence, smell of kerosene would be present, match sticks would be present, kerosene would be present in the house and therefore the medical evidence in itself has no

corroborative value in such cases.

7. P.w.5 is the doctor who examined the victim. He states that on 20-1-2002 he was working as resident medical officer in civil hospital, Solapur when the patient by name Sulochana was brought to the hospital for treatment for burn injury. Police Personal has accompanied the victim and claimed that dying declaration of the victim is required to be recorded. The doctor has examined the patient and found that she was in a position to give statement and accordingly made an endorsement on Exh.18 and he also describes the manner in which the statement was recorded and also states that he was present through out. In the cross examination however, the witness admits that the patient had come to the casual ward on 17-1-2002 and the history recorded by the causality medical officer reveals that there was burst of stove. He also admits that if the patient is burnt by any substance such as kerosene, petrol etc. there can be smell of that substance. In the deposition of this doctor, it is clear that he was present when the dying declaration Exh.18 was recorded. Yet he does not say in the examination-in-chief as to what he heard the victim telling the police, who recorded the statement. The witness then admits the case history as one of accidental burn. Both Exhs. 24 and 25 are recorded on

17-1-2002. Both bore the certificate of the doctor stating that the victim was in a conscious condition. That being the factual position and the statement of the victim having been recorded twice in a day immediately, there is no admission as to why it was felt necessary to record third statement on 20-1-2002 as deposed to by P.w.5 doctor. A scrutiny of Exh.18, Exhs. 24 and 25 which are the statement made by the victim before her death reveals that the victim was never certain as to what had happened. In Exh.24 she says that her husband came home and he wanted tea. Therefore she started making tea and the stove burst accidently and she was burnt. So according to Exh.24 the tea was being prepared for the husband who had come home. But in Exh.25 she says that her husband had gone out and he felt like having a cup of tea in the afternoon and therefore she was lighting the stove, which accidently burst and she got fire. In Exh.18 recorded on 20-1-2002 she however gives out a complete new story of how she was dealing with the groundnut, how she was abused by the accused, how the victim was assaulted by the accused for eating groundnut.

8. P.w.1 Dattu father of the victim has stated in his deposition that on Wednesday night he learnt about his daughter received burn injury and was admitted in civil hospital. Solapur. He therefore went there on the

next day around 11.00 a.m. According to this witness when he saw the victim, the victim told him that she was burnt by the accused. In the cross examination, however, this witness admits that initially the victim told him that the victim got fire as her saree fell on the stove. Then this witness volunteered that she said so because she was threatened by the accused.

9. P.w.2 Gajanan was a panch who has turned hostile. P.w.3 is Police Head Constable who has prepared the spot panchanama. He is the person who recorded Exh.18 and has proved. P.w.4 is also Police Head Constable Anand Shinde, who has deposed that on 19-1-2002 P.w.no.1 Dattu had come to him and complained about the burns to his daughter. He has made an entry in the station diary on that day. He does not deposed before the court that on 19-1-2002 when Dattu P.w.1 complained about burn injury to his daughter he mentioned of the injury having caused by the accused to the victim. As we have also noted that P.w.5 is the doctor who had certified that the patient was conscious to make statement on all Exhs. 18, 24 and 25.

10. In this state of affairs and evidence, it is difficult to sustain the order of conviction. All the three statements Exhs. 18, 24 and 25 have been certified by the doctor as ones recorded when the maker

of the statement was conscious. If that is so, there is no explanation by the prosecution as to why Exh.18 was required to be recorded on 20-1-2002. The contradictory statement made in each of these, create a reasonable doubt in the mind of a prudent man that the victim is not coming out with the truth version of what has happened. Whether she was preparing tea for herself or it was being prepared for the husband or she was put on fire by the accused is not certain. Immediate disclosure to the police is by the victim and that is of accidental burns. In such circumstances, relying on Exh.18 alone conviction under section 302 IPC is not possible. The existence of these three statements made by the victim one after another create a doubt in the minds of a reasonable man as to what exactly is the cause of death. That being so, the benefit of such doubt is liable to be given to the accused. In the circumstances, in our opinion, the order of conviction cannot be sustained in the face of this contradictory documentary proof. In the result, therefore, the appeal succeeds and is allowed. The order of conviction and sentence is set aside. The accused is in jail. He be released forthwith if not otherwise required by law.

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